

## Small Business Administration

## § 120.522

### SERVICING

#### **§ 120.510 Servicing direct and immediate participation loans.**

SBA services the direct loans that it makes. Generally, the Lender services immediate participation loans that it makes and in which SBA participates.

#### **§ 120.511 Servicing guaranteed loans.**

The Lender services guaranteed loans, holds the Loan Instruments and receives the Borrower's payments of principal and interest.

#### **§ 120.512 Who services the loan after SBA honors its guarantee?**

Generally, after SBA honors its guarantee, the Lender must continue to hold the Loan Instruments and service and liquidate the loan. The Lender must execute a Certificate of Interest showing SBA's percentage of the loan, and must submit a liquidation plan to SBA for each loan to be liquidated. If SBA elects to service or liquidate the loan, the Lender must assign the Loan Instruments to SBA.

#### **§ 120.513 What servicing actions require the prior written consent of SBA?**

Except as otherwise provided in a Supplemental Guarantee Agreement with the Lender, SBA must give its prior written consent before the Lender takes any of the following actions:

- (a) Alters substantially the terms or conditions of any Loan Instrument (for example, any increase in the principal amount or change in the interest rate, or action conferring a Preference on the Lender);
- (b) Releases collateral having a cumulative value in excess of 20 percent of the original loan amount;
- (c) Accelerates the maturity of the note;
- (d) Sues upon any Loan Instrument;
- (e) Compromises or waives any claim against any Borrower, guarantor, obligor or standby creditor arising out of any Loan Instrument; or
- (f) Increases the amount of any prior lien held by the Lender on the collateral securing the loan.

### SBA'S PURCHASE OF A GUARANTEED PORTION

#### **§ 120.520 When does SBA honor its guarantee?**

(a) SBA, in its sole discretion, may purchase a guaranteed portion of a loan at any time. A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and the default has not been cured. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender's right to request purchase on that default lapses.

(b) Purchase by SBA of the guaranteed portion does not waive any of SBA's rights to recover money paid on the guarantee, based upon the Lender's negligence, misconduct, or violation of this part, including those actions listed in § 120.524(a), the Loan Guarantee Agreement or the Loan Instruments.

#### **§ 120.521 What interest rate applies after SBA purchases its guaranteed portion?**

When SBA purchases the guaranteed portion of a fixed interest rate loan, the rate of interest remains as stated in the note. On loans with a fluctuating interest rate, the interest rate that the Borrower owes will be at the rate in effect at the time of the earliest uncured payment default, or the rate in effect at the time of purchase (where no default has occurred).

#### **§ 120.522 How much accrued interest does SBA pay to the Lender or Registered Holder when SBA purchases the guaranteed portion?**

(a) *Rate of interest.* If SBA purchases the guaranteed portion from a Lender or from a Registered Holder (if sold in the Secondary Market), it will pay accrued interest at:

- (1) The rate in the note if it is a fixed rate loan; or
- (2) The rate in effect on the date of the earliest uncured payment default, or of SBA's purchase (if there has been no default).

(b) *Payment to Lender.* If the Lender submits a complete purchase request to SBA within 120 days of the earliest uncured payment default, SBA will pay accrued interest to the Lender from

## § 120.523

## 13 CFR Ch. I (1–1–00 Edition)

the last interest paid-to-date up to the date of payment. If the Lender requests SBA to purchase after 120 days from the date of the earliest uncured payment default date, SBA will pay only 120 days of interest. For LowDoc loans, the interest paid to the Lender will be governed by the Supplemental Guarantee Agreement.

(c) *Payment to Registered Holder.* SBA will pay a Registered Holder all accrued interest up to the date of payment.

(d) *Extension of the 120 day period.* Before the 120 days expire, the SBA field office may extend the period if the Lender and SBA agree that the Borrower can cure the default within a reasonable and definite period of time or that the benefits from doing so otherwise will exceed the costs of SBA paying additional interest. If the 120 days have passed, only the AA/FA or designee can extend the period.

### § 120.523 What is the “earliest uncured payment default”?

The earliest uncured payment default is the date of the earliest failure by a Borrower to pay a regular installment of principal and/or interest when due. Payments made by the Borrower before a Lender makes its request to SBA to purchase are applied to the earliest uncured payment default. If the installment is paid in full, the earliest uncured payment default date will advance to the next unpaid installment date. If a Borrower makes any payment after the Lender makes its request to SBA to purchase, the earliest uncured payment default date does not change because the Lender has already exercised its right to request purchase.

### § 120.524 When is SBA released from liability on its guarantee?

(a) SBA is released from liability on a loan guarantee (in whole or in part, within SBA’s exclusive discretion), if any of the events below occur:

(1) The Lender has failed to comply materially with any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization;

(2) The Lender has failed to make, close, service, or liquidate a loan in a prudent manner;

(3) The Lender’s improper action or inaction has placed SBA at risk;

(4) The Lender has failed to disclose a material fact to SBA regarding a guaranteed loan in a timely manner;

(5) The Lender has misrepresented a material fact to SBA regarding a guaranteed loan;

(6) SBA has received a written request from the Lender to terminate the guarantee;

(7) The Lender has not paid the guarantee fee within the period required under SBA rules and regulations;

(8) The Lender has failed to request that SBA purchase a guarantee within 120 days after maturity of the loan;

(9) The Lender has failed to use required SBA forms or exact electronic copies; or

(10) The Borrower has paid the loan in full.

(b) If SBA determines, after purchasing its guaranteed portion of a loan, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any money paid on the guarantee plus interest from the Lender responsible for those events.

(c) If the Lender’s loan documentation indicates that one or more of the events in paragraph (a) of this section may have occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guarantee, and may withhold a decision on whether to honor the guarantee until the completion of such investigation.

(d) Any information provided to SBA prior to Lender’s request for SBA to honor its guarantee shall not prejudice SBA’s right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.

(e) Unless SBA provides written notice to the contrary, the Lender remains responsible for all loan servicing and liquidation actions until SBA honors its guarantee in full.

### DEFERMENT, EXTENSION OF MATURITY AND LOAN MORATORIUM

### § 120.530 Deferment of payment.

SBA may agree to defer payments on a business loan for a stated period of